

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David D. Harkin,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1117
Parcel No. 120/00558-020-000

On January 22, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, David D. Harkin, requested that his appeal be considered without hearing and submitted evidence in support of his petition. He was self-represented. The Board of Review designated Assistant County Attorney, Ralph E. Marasco, Jr., as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

David Harkin, owner of property located at 5723 SE 24th Court, Drive, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a two-story dwelling having 2384 total square feet of living area, a full 1560 square-foot unfinished walkout basement, and an attached 664 square-foot three-car garage. The property is also improved by a large deck and patio. The main dwelling was built in 2005, and has a 2+5 quality grade classification. The dwelling is situated on a 0.338 acre site. Harkin purchased the property in August 2008 for \$258,000. We note that the property sold for \$349,900 in a prior sale in May 2006.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$339,900, representing \$26,900 in land value and \$313,000 in improvement value.

Harkin protested to the Board of Review on the ground the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); the property is assessed for more than authorized by law under section 441.37(1)(b); and that the property is not assessable, is exempt from taxes, or is misclassified under section 441.37(1)(c). He indicated that the third listed ground was based on his purchase price of \$258,000 and the lower assessments of similar homes in the area. He claimed that \$258,000; allocated \$24,210 to land and \$233,790 to the dwelling was the actual value and a fair assessment of the property. The Board of Review granted the protest stating, "The assessed value of this property was changed because it was not equitable with similar property in the area." The assessed value was changed to \$283,900, allocated \$26,900 to land value and \$257,000 to dwelling value.

Harkin filed his appeal with this Board and urged the grounds that the assessment was not equitable as compared with assessments of other like property in the taxing district under section 441.37(1)(a). He also indicated in his statement of the claim and relief that he sought a reduction in the assessment to his purchase price of \$258,000, essentially claiming that the property was assessed for more than its fair market value. Harkin maintains that his purchase was not a foreclosure sale and that the purchase price of \$258,000, and the bank appraisal at that value, is an accurate measure of the property's fair market value.

Harkin submitted information concerning three properties he considered comparable on nearby SE 24th and SE 25th Streets. The assessed values of these properties ranged from \$234,500 to \$247,200 with a median assessment of \$242,900. The properties had quality grades of 2+0 and 2+5. We note that all of these properties have less total square feet of living area than Harkin's dwelling.

Norman (Mike) Swaim of Swaim Appraisal Service, Inc. in West Des Moines completed an appraisal of the property at the request of the Board of Review. He described Harkin's neighborhood as comprised of newer dwellings that have been well-maintained and nicely landscaped. He inspected the property on December 28, 2009, and retrospectively valued the property as of the assessment date. He noted that the market has slowed over the past two years which caused values to stabilize, or in many cases to decline, indicating external obsolescence created by a soft market for homes above \$200,000 on the south side of Des Moines. Swaim identified six comparable properties in close proximity to the subject property and adjusted for square footage, walkout basement access, basement finish, garage size, and other amenities. Additional adjustments were made to some of the comparable properties for superior quality, style and condition.

Unadjusted sale prices per square foot ranged from \$103.26 to \$160.17 with a median of approximately \$118 per square foot. The subject property is assessed at \$119 per square foot. Swaim developed both the sales and cost approaches to valuation. He opined a value of \$264,100 using Marshall Swift Residential Cost Handbook. Swaim concluded a \$264,000 value using the sales approach which was given the most weight since, in his opinion, substitution is the basis for the typical buyer's decision process. The cost approach was given limited weight and was used as a check. His final estimate of value was \$264,000 as of January 1, 2009.

In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined that, "It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value." The evidence of the sale conditions at the time of Harkin's purchase is contradictory. The Swaim appraisal and the Board of Review appraiser analysis in the certified record both suggest that Harkin's purchase of the subject property was a foreclosure sale. Alternatively, Harkin reports that he purchased it directly from the

seller and that it was not a foreclosure sale. We are mindful of the fact that foreclosure sales are not considered normal transactions and require either exclusion or adequate adjustments to be used as comparative sales. *See* Iowa Code §441.21(1)(b). However, the purchase information provided to the Appeal Board does not definitively indicate whether or not the sale was the result of a foreclosure, short sale or other distress sale. Therefore, Harkin's purchase price, although not alone determinative of fair market value, was considered in arriving at the subject property's assessment value.

Reviewing all the evidence, we find that substantial evidence supports Harkins's contention that his property was assessed for more than authorized by law as of the assessment date. Further, we find the Swaim appraisal is the most credible evidence of the fair market value of the Harkin property as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). Accordingly, Harkin's August 2008 purchase price was given consideration as an indication of the subject property's fair market value on the assessment date.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find the Swaim opinion of value supports the claim that the property is over-assessed. Further, we rely on his appraisal as the most credible evidence of the subject property's fair market value as of the assessment date.

Viewing the evidence as a whole, we determine that substantial evidence supports Harkin's claim of over-assessment as of January 1, 2009. We, therefore, modify the Harkin property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$264,000, representing \$26,900 in land value and \$237,100 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review, is modified to \$264,000, representing \$26,900 in land value and \$237,100 in dwelling value.

Dated this 23 day of February 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2-23</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature:	<u>[Handwritten Signature]</u>